



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-O-K-

DATE: FEB. 13, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a forensic scientist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, stating that "[t]he Petitioner submitted his Master of Science degree in Mechanical Engineering from [REDACTED] but the record does not indicate that the Petitioner graduated from that university. According to the Petitioner's curriculum vitae and Form ETA-750B, Statement of Qualifications of Alien, he received his Master of Science degree in Mechanical Engineering from [REDACTED] in May 2011 and his Ph.D. in Biomechanical Engineering from [REDACTED] in December 2014. While the Petitioner's April 2015 cover letter accompanying the petition listed "Academic Degrees of Petitioner" among his supporting documents, the record does not appear to include either his master's degree or Ph.D. Accordingly, without evidence of the aforementioned academic degrees, the Director's determination that the Petitioner qualifies as a member of the professions holding an advanced degree is withdrawn.

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. On appeal, the Petitioner argues that USCIS was "arbitrary and capricious" in denying the petition and "abused its discretion by failing to properly follow" the *Dhanasar* precedent decision. In addition, he contends that the Director's second request for evidence (RFE) did not provide him with sufficient notice of the documentation required under prong two of the *Dhanasar* framework.³ Finally, the Petitioner asserts that the Director "failed to examine all of the evidence provided." For the reasons discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ Pages 3 and 4 of the second RFE attachment, however, provided an extensive listing of the types of evidence a petitioner may submit for consideration under *Dhanasar*'s second prong.

1. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that he seeks to continue his research in biomechanics in the capacity of a forensic scientist.⁴ He further states: “In this role, [the Petitioner] uses his specialized mechanical and biomedical engineering skills to explore the cause, nature and severity of injuries, tolerance thresholds, and injury prevention in a variety of accident settings.” In addition, the Petitioner contends that his “work is contributing to a better understanding of the relationship between the setting of an accident and the resulting severity of human injuries.” We find that the Petitioner’s proposed forensic biomechanics research aimed at improving the health and safety of accident victims has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. The record includes letters of support discussing how the Petitioner’s proposed work stands to advance the field of forensic biomechanics and improve the health and safety of Americans. For instance, [REDACTED] associate professor of mechanical engineering at [REDACTED] states that the Petitioner’s proposed research is of national importance “because better understanding the relationship between [the] setting of an accident and the resulting severity of human injuries could lead to improvements that prevent or reduce the severity of some injuries.” In addition, [REDACTED] founding principal at the [REDACTED] asserts that the Petitioner’s work aimed at understanding “the cause, nature, and severity of injuries, as well as the tolerances and prevention for injury” has the potential for “improving the overall safety and health of people living in the United States.” Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences.⁶ As the Petitioner has documented both the substantial merit and national importance of his proposed research, we find that he meets the first prong of the *Dhanasar* framework.

2. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, published articles, conference presentations, Ph.D. dissertation, membership in the [REDACTED] and his 2017 [REDACTED]. The Petitioner also offered documentation relating to his patent [REDACTED].

⁴ From May 2015 until April 2017, the Petitioner worked as a senior forensic scientist for [REDACTED]. Since April 2017, he has worked as a senior forensic scientist for [REDACTED], a forensic consulting company. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

⁵ [REDACTED] was the Petitioner’s Ph.D. supervisor at [REDACTED].

⁶ For example, [REDACTED] principal and senior consultant for [REDACTED] notes that the Petitioner is “continuing to publish abstracts and articles . . . in the field of accident reconstruction.”

application for a [REDACTED] and reference letters discussing his forensic science work and research projects.

The Petitioner maintains that he has performed “groundbreaking work into the understanding of smooth muscle mechanical characterizations” and that his findings “have been utilized by many scientists and researchers in his field.” In letters supporting the petition, several of the Petitioner’s current and former colleagues discussed the Petitioner’s research aimed at understanding smooth muscle biomechanics. For example, with respect to the Petitioner’s doctoral research relating to bladder smooth muscle dysfunctions, [REDACTED] indicated that the results of the Petitioner’s work “made a significant contribution toward a propos[ed] clinical model funded by [National Institutes of Health] that could lead to the development of novel cystometric tests for improved overactive bladders (OAB) diagnoses and treatments and for the potential identification of novel mechanistic targets in the pathophysiology of OAB.”

[REDACTED] a biomedical physiologist at [REDACTED] stated that the Petitioner discovered “that mechanical stretch can theoretically account for myogenic whole tissue rhythmic contractions. This is very important to our laboratory specifically, and will aid in advancing the field in general.” In addition, [REDACTED] professor of engineering at [REDACTED], indicated that the Petitioner “developed analytical and experimental techniques that could lead to presenting new theories about the interrelated phenomena and mechanisms in smooth muscle at the cellular scope.” [REDACTED] and [REDACTED], however, do not offer specific examples of how the Petitioner’s work has generated positive interest among relevant parties, has been implemented by others in the field, or otherwise reflects a record of success in his area of research.

Furthermore, [REDACTED] graduate program director in the Department of Mechanical and Nuclear Engineering at [REDACTED] asserted that the Petitioner’s “work and publication record including nine international citations from two peer-reviewed published articles demonstrate the impact and merit of his research contributions.” Similarly, [REDACTED] assistant professor in the Department of Biomedical Engineering at [REDACTED] stated that the Petitioner’s work is “cited internationally which proves the significant impact of his studies in the field of smooth biomechanics.” In the appeal brief, the Petitioner contends that he provided “a citation list showing that his research papers have been used by many scientists and researchers in his field,” but the record does not include this list.⁹ While [REDACTED] claims that the Petitioner’s work has been cited to nine times, the record does not contain comparative statistics indicating how often other forensic scientists or biomechanics researchers are cited, nor does the evidence otherwise demonstrate that the Petitioner’s published and presented research constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet this prong.

⁷ We discuss only a sampling of these letters, but have reviewed and considered each one.

⁸ [REDACTED] noted that he previously served on the faculty of the Department of Mechanical Engineering at [REDACTED]

⁹ We note that the Petitioner’s document/exhibit lists accompanying the petition (April 2015) and provided in response to the Director’s two RFEs (November 2016 and November 2017) do not identify a citation list.

With respect to his [REDACTED] the Petitioner presented an August 2017 email from the [REDACTED] education director informing him of his selection for this “travel award.” The email states that he received “a complimentary registration to the 2017 [REDACTED] at the [REDACTED] and an \$800 travel stipend to help with your travel costs.” Regarding the Petitioner’s [REDACTED] membership, he submitted an email reflecting that he became an “Early Career” member of that society in August 2015. In addition, he provided documentation indicating that he filed a patent application for a “[REDACTED]” in November 2016. The Petitioner filed his patent application, became a member of [REDACTED] and received his [REDACTED] travel award after he filed the instant petition on May 1, 2015, and therefore this evidence does not show his eligibility under the second prong of the *Dhanasar* framework at the time of filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the evidence does not establish that his patent application, [REDACTED] membership, and travel award represent a record of success in his field or that they are otherwise an indication that he is well positioned to advance biomechanics research.

The record demonstrates that the Petitioner has conducted, published, and presented research during his career. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that his research has been frequently cited by independent scientists or otherwise served as an impetus for progress in the field, that it has affected forensic biomechanics practices, or that it has generated substantial positive discourse in the broader forensic science community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

3. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In the appeal brief, the Petitioner identifies language in the Director’s decision under this prong that applied to *NYSDOT* rather than *Dhanasar*. For example, the decision stated that “[t]he petitioner failed to submit evidence that his knowledge and experience exceed the minimum requirements for his occupation.” We withdraw the Director’s statement in that regard.

Here, the Petitioner claims that he is eligible for a waiver due to his research skills and accomplishments, including his discoveries relating to OAB. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of S-O-K-*, ID# 1864546 (AAO Feb. 13, 2019)